Filed 4/2/19 In re A.H. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.H. et al., Persons Coming Under the Juvenile Court Law.	B288387 (Los Angeles County Super. Ct. No. CK57697)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.H. et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County, Veronica S. McBeth, Judge. Affirmed.

E.H. and J.H., in pro. per., for Defendants and Appellants.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

E.H. (mother) and J.H. (father) appeal from several orders of the juvenile court relating to their daughter A.H. (born in 2003) and son S.H. (born in 2012). Mother and father contend (1) the juvenile court wrongfully deprived them of their constitutional right to represent themselves; (2) there is no proper basis for the court's refusal to return S.H. to their custody; and (3) the court erroneously denied a hearing on their petitions to modify prior orders concerning S.H.'s placement and the termination of father's and mother's reunification services.

We conclude mother and father have forfeited their first two contentions and have shown no error with respect to their third contention.

FACTUAL AND PROCEDURAL BACKGROUND

The family's dependency proceedings involving mother's and father's eight children together have generated numerous prior appeals and writ proceedings. Our prior opinions set forth some of the relevant background.

"[I]n 1998 father was convicted of willful cruelty to mother's child from another relationship, and mother failed to reunify with that child. The parents' two oldest children together, A.H. and Wi.H., were dependents of the court between 2005 and 2007, due to father's earlier abuse of their half sibling. Between 2008 and 2010, the parents' third child, B.H., was a dependent due to medical neglect.

"Since 2011, the parents' six oldest children have been the subjects of an open dependency case, based on sustained allegations that father hit A.H. in the face with his fist, mother failed to protect her, and both parents regularly gave her beer to drink. S.H., the parents' seventh child, was declared a dependent of the court after his birth in 2012, based on the sustained allegations in his older siblings' case. The parents were ordered to receive reunification services and to complete parenting education and individual counseling. In March 2013, the court terminated reunification services with the six older children, but did not return the children to the parents' custody due to their insufficient progress, father's disruptive behavior through most of the case, and mother's continued submissiveness to his control." (*E.H. v. Superior Court* (Aug. 29, 2014, B255970 [nonpub. opn.].)

"S.H. was removed at birth in 2012 based on sustained allegations in his older siblings' case—that in 2011 father had hit his then-seven-year-old daughter A.H. in the face with his fist, giving her a black eye; mother had failed to protect her; and both parents had regularly given A.H. beer to drink. Reunification services for S.H. were terminated and a [Welfare and Institutions Code] section 366.26 hearing was set in 2014. Mother's writ petition challenging that order was denied in case No. B255970.

"Ms. T. has cared for S.H. since 2014 and has been his legal guardian since 2016. With the exception of A.H., who was placed

with Ms. T. in 2017, all of S.H.'s other siblings have been adopted, and jurisdiction over them has been terminated." (*E.H. v. Superior Court* (Nov. 15, 2018, B289469) [nonpub. opn.], p. 3.)

On January 26, 2018, father filed a petition under Welfare and Institutions Code section 388 requesting a modification of prior orders continuing S.H.'s placement with A.T. as guardian and terminating father's reunification services.[1] Father argued A.T. was unfit to serve as guardian because she was married to I.R., who according to father had been ordered to have no contact with children under DCFS supervision. Father argued he had successfully completed his reunification plan and six months of visitation. Father sought to terminate A.T.'s guardianship and resume reunification services.

On February 9, 2018, mother filed a section 388 petition requesting modification of prior orders continuing S.H.'s placement with A.T. as guardian and terminating mother's reunification services. Mother argued A.T. was unfit to serve as guardian because her husband, I.R., had been ordered to have no contact with children under DCFS supervision. Mother also argued A.T. was not a lawful permanent resident and had obstructed mother's reunification efforts. Mother argued she had successfully completed her reunification plan and had

---

[1] All undesignated statutory references are to the Welfare and Institutions Code.

successfully visited S.H. for the child's entire life. Mother sought to terminate A.T.'s guardianship and resume reunification services.

On February 14, 2018, the juvenile court denied father's section 388 petition without a hearing because (1) the petition failed to state substantial new evidence or a change of circumstances, and (2) the proposed order was not in the best interest of the child. On February 20, 2018, the court denied mother's section 388 petition without a hearing because the petition failed to state new evidence or a change of circumstances.

Mother and father filed notices of appeal on February 9, April 16, and August 21, 2018, stating they were appealing from findings and orders made on numerous dates beginning January 3, 2018.

DISCUSSION

1. *Mother and Father Have Forfeited Their Contention That the Court Wrongfully Deprived Them of Their Right of Self-representation*

Mother and father contend the juvenile court wrongfully deprived them of their constitutional right to represent themselves, so the court had no jurisdiction. They argue in their appellants' opening brief that on August 16, 2018, the court

deprived them of due process by refusing to allow them to proceed without counsel. They also argue that on September 6 and 14, 2018, the court refused to allow father to proceed without counsel and on the 14th, ordered his removal from a hearing for demanding to proceed without counsel. In their reply brief, however, they argue these events occurred in 2012 rather than 2018. Mother and father cite no evidence in the record providing a factual basis for their argument, and they fail to identify and cite the challenged orders.

An appellant's opening brief must identify the judgment or order appealed from (Cal. Rules of Court, rule 8.204(a)(2)(A)), and any reference to a matter in the record must be supported by a specific record citation (rule 8.204(a)(1)(C). An appellant's failure to satisfy these requirements frustrates appellate review, and in those circumstances the reviewing court may consider the challenge forfeited. (*Young v. Fish & Game Com.* (2018) 24 Cal.App.5th 1178, 1190-1191; *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 589-590.) Accordingly, we consider the contention forfeited and need not address the merits.

2. *Mother and Father Have Forfeited Their Contention That the Court Erred by Refusing to Return S.H to Their Custody*

Mother and father contend they have complied with the juvenile court's orders and reunification plans and there is no proper basis for the refusal to return S.H. to their custody.[2] Their argument consists of a single conclusory paragraph with no citations to evidence in the record or legal authority.

A trial court judgment or order is presumed to be correct, and all intendments and presumptions are indulged to support it on matters where the record is silent. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant has the burden to affirmatively demonstrate reversible error. (*Jameson*, at p. 609; *Denham*, at p. 564.) An appellant must support all appellate arguments with legal analysis and appropriate citations to the evidence in the record (rule 8.204(a)(1)(C)). An appellant who fails to do so fails to sustain his or her burden on appeal and forfeits the assignment of error. (*Ewald v. Nationstar Mortgage, LLC* (2017) 13 Cal.App.5th 947, 948; *Shenouda v. Veterinary Medical Bd.* (2018) 27 Cal.App.5th 500. 515.) Mother and father fail to sustain their burden as appellants and have forfeited their

---

[2] To the extent mother and father challenge the denial of their section 388 petitions without a hearing, we address that contention below.

contention that the juvenile court erred by failing to return S.H. to their custody.

3. *Mother and Father Have Shown No Error in the Denial of Their Section 388 Petitions*

Mother and father contend the juvenile court erred by denying a hearing on their section 388 petitions seeking to terminate A.T.'s guardianship of S.H. and resume their reunification services. They argue they were entitled to a hearing because they made a prima facie showing of a change of circumstances and new evidence. According to mother and father, there was new evidence that A.T. was married, her husband frequently spent time in her home with the children present, and her husband had been ordered to avoid contact with children under the Department's supervision. They also cite the allegations in their petitions that they had successfully completed counseling and parenting classes, father had successfully completed six months of visitation while mother had successfully completed five years of visitation despite A.T.'s efforts to alienate mother, and it would be in S.H.'s best interest to continue his bonded relationship with mother and father.

Section 388 authorizes a parent to petition for modification of a previous order. The petition must include a concise statement of any change of circumstance or new evidence that requires changing the order. (Cal. Rules of Court,

rule 5.570(a)(7).) The court must liberally construe a section 388 petition in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a).) The court may deny a hearing if "[t]he petition . . . fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction or fails to show that the requested modification would promote the best interest of the child . . . ." (*Id.*, rule 5.570(d)(1).) Thus, the petition must make a prima facie showing of both a change of circumstance or new evidence since the prior order and that the proposed modification would promote the best interest of the child. (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478; *In re K.L.* (2016) 248 Cal.App.4th 52, 61.)

" 'A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child's best interests.' [Citation.] In determining whether the petition makes the required showing, the court may consider the entire factual and procedural history of the case. [Citation.]" (*In re K.L.*, *supra*, 248 Cal.App.4th at pp. 61-62.)

We review the juvenile court's denial of a section 388 petition without a hearing for abuse of discretion. (*In re K.L.*, *supra*, 248 Cal.App.4th at p. 62.) A court abuses its discretion when its decision is arbitrary, capricious, or patently absurd and results in a manifest miscarriage of justice. (*In re D.Y.* (2018) 26 Cal.App.5th 1044, 1056.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citation.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

S.H. has lived with A.T. since March 2014. A.T. became S.H.'s legal guardian in June 2016. The juvenile court terminated reunification services for both parents in April 2018. After the termination of reunification services, family reunification is no longer the paramount goal, the focus shifts to the child's need for permanency and stability, and there is a rebuttable presumption that continued foster care is in the child's best interest. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re K.L.*, *supra*, 248 Cal.App.4th at p. 62.)

Mother and father have not shown that the information concerning I.R. involved any change of circumstance or new evidence. According to the Department's report filed on July 24, 2018, A.T. and her husband were separated, and the Department

had obtained a Notarized Spousal Waiver. Mother and father cite no evidence that at the time they filed their section 388 petitions the matters alleged in their petitions constituted a change of circumstances or new evidence.

Moreover, at the time of the section 388 petitions, S.H. had been under juvenile court supervision for more than five years, six of his siblings had been adopted and jurisdiction over them had been terminated. Mother and father repeatedly demonstrated that they were unable to successfully complete their case plans. The trial court reasonably concluded the requested order terminating A.T.'s' guardianship and resuming reunification services was not in the best interest of S.H. and that no hearing was warranted. Mother and father have shown no abuse of discretion.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.

We concur:

MANELLA, P.J.

WILLHITE, J.